

REMARKS

Applicants respectfully request that should additional fees or a credit be associated with the filing of this paper, the additional fees or credit can be charged or credited to the undersigned Attorney's Deposit Account 10-0100.

Applicants have amended claims 14-15 to overcome and/or moot the objections and rejection under 35 USC § 112, 2nd par.

Claims 26-30 are added.

Claims 14-15 are rejected as allegedly being anticipated or, in the alternative, allegedly rendered obvious over El-Khalaty et al.

Applicants respectfully traverse the rejection.

El-Khalaty et al. is directed to an extraction from the seeds only, which seed oil is intended to be used in a food product. The present invention is directed to the whole fruit. The present extract is derived from the whole fresh or dried fruit to provide a pharmaceutical composition for e.g. treatment of BPH in a male mammal.

Indeed, it is conceded at p. 5, last par. of the office action, that “El-Khalaty teaches an oil fraction obtained from ...seeds” (emphasis supplied). The El-Khalaty et al. seed oil is contemplated for food-stuffs.

Applicants' composition is derived from the “whole fruit” (e.g. claim 29), and not merely a conventional seed oil extract for food-stuffs. It is nonetheless alleged that the El-Khalaty et al. composition and the claimed composition are essentially the same. To support this allegation, the office action states that the El-Khalaty et al. oil contains “palmitoleic acid in an amount of 9.8%”, as allegedly

reported at Table IV, p. 273. This allegation is incorrect. El-Khalaty et al., at Table IV, p. 273, reports “Palmitoleic” acid in an amount of “0.8%” (emphasis supplied). This incorrect reading is further confirmed in the accompanying explanatory commentary in which El-Khalaty et al. states in pertinent part that “Minor quantities of palmitoleic, as well as linolenic acids were detected in all cases not exceeding 1%” (emphasis supplied, p. 273).

Applicants’ composition, as claimed, requires palmitoleic acid in amounts of “1.5 – 20% by weight” (e.g. claims 15, 27 and 30).

El-Khalaty et al. fails to disclose and teaches away from the present invention in at least three material aspects; 1) the “whole fruit”; 2) “1.5-20% by wt.” “palmitoleic acid”; and 3) the “pharmaceutical composition” for the treatment of “BPH”.

The office action alleges at p. 7, last full par., that with the showing in El-Khalaty et al. “the burden of establishing non-obviousness by objective evidence is shifted to the Applicants”. Applicants respectfully disagree with that assertion, and more specifically to the underlying premise. The burden of a prima facie showing of obviousness rests with the Patent Office. And where, as here, the relied on reference fails to disclose the claimed “whole fruit” “pharmaceutical composition” comprising “palmitoleic acid” in amounts of “1.5 -20% by weight”, and on analysis, variously teaches away from the claimed composition, there is manifestly no prima facie showing under 35 USC §103. And the burden of a prima facie showing under 35 USC § 103(a) is unmet.

An early allowance is respectfully requested.

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Date: October 12, 2009

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